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Teese (F. H.)

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AS A

REPLY

TO THE

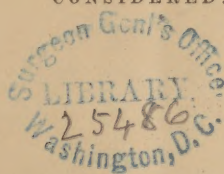
PLEA OF SUICIDE,

IN

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ACTIONS AGAINST LIFE INSURANCE COMPANIES,

CONSIDERED.



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INSANITY

AS A

REPLY TO THE PLEA OF SUICIDE.

THE subject of insanity as a reply to the defence of suicide in suits brought against life insurance companies, has frequently engaged the attention of the courts of England and the United States. In view of the increasing demands made for payment of policies of life insurance where the assured caused his own death, it may be well to consider whether the payment of the insurance on the lives of suicides ought to be encouraged, where the legal right to receive it is doubtful, and whether the law concerning contracts should not be at least as strictly construed in such cases as in other actions on contracts. If, as a matter of law, payment of the life insurance policy of a suicide cannot be enforced, then a life insurance company, particularly a mutual company, which is simply a trustee of the funds of its members, cannot rightfully use those funds in payment of such a claim. To do so would be as much a misapplication of the funds of the company, as would be that of any other gift of the moneys entrusted to its charge.

Life insurance is effected upon the faith of certain representations in writing made by the assured, as to his health, age, &c. If these representations are true, the company

assumes and has a right to assume that according to the tables of mortality the assured will live a certain number of years; and he pays an agreed upon annual sum, which being invested at compound interest, will enable the company at his death to pay the amount insured. It is evident therefore, that without any express stipulation to that effect, any act on the part of the assured which would disturb the fundamental condition of his policy, namely, that the expectancy of his life was a certain number of years, would be a fraud upon the company and render his policy void. It is, and must be, a *condition precedent* to the payment of the policy, that the assured will not by his own act shorten his life, and if he being a sane man, intentionally does so, an obligation on the part of the company to pay the amount insured never arises. It would also be against public policy to compel the payment of such a claim, as it would tend to the encouragement of suicide. *Moore v. Woolsey*, 28 E. L. & E., 255.

Suicide was a *crime* by the common law. The body of the criminal was denied christian burial, and his goods were forfeited to the King; and although the penalties of suicide are abolished in this country, it is still a criminal act here, (1 *Bish. C. L.* 956,) and no *presumption* of insanity arises from the fact of self-killing; on the contrary, the law presumes every man to be sane until the contrary is proved, (*Spencer's case*, 1 *Zab.* 201,) and if in a suit against a life insurance company, insanity is a good replication to a plea of suicide, the burthen of proof is upon the plaintiff.

But it is not every killing of one's self, which would be

death "by his own hand" within the meaning of the contract. A person who should take poison for medicine, and die in consequence, would not die by his own hand within such meaning, because the deceased would not in such case have *willed* his own death; such death is purely accidental; and the forfeiture in the policy applies only where the act which caused the death was *intended* by the assured to take his life. Nor would the forfeiture apply where the act of self-killing was committed by a person so bereft of reason as not to understand the physical nature and consequences of the act by which his life was taken. Thus a lunatic who should imagine himself a bird, and in attempting to fly should kill himself, would be held to no accountability any more than would a somnambulist who should in his sleep walk over a precipice.

But if the assured *intending* to take his own life, kills himself, is it a good replication to a plea that he died by his own hand, that the act was committed while he was of unsound mind? The answer to this question involves a consideration of the liability, civilly, of a lunatic for his acts and contracts.

It is a good plea to a criminal prosecution that the offence was committed by a lunatic. But a lunatic is civilly liable for torts committed by him, and in many cases also upon his contracts. In *Weaver v. Ward*, Hobart 189, it is said: "If a lunatic kill a man, or the like, this shall be no felony, because felony must be done *animo felonico*, yet in trespass which intends only to give damages according to hurt or loss, it is not so; and therefore if a lunatic hurt a man he shall

be answerable in trespass ; and therefore no man shall be excused for a trespass, except it may be judged utterly without his fault." The same doctrine is held by *Sir Matthew Hale*, 1 P. C. 16, and there are many English cases to the same effect. See *Dormay v. Borradaile*, 5 M. G. & S. 380, and authorities there cited.

The same doctrine is held in this country. In *Krom v. Schoonmaker*, 3 Barb. 647, the court say: "a lunatic cannot be punished for crime, but he may be sued for an injury done to another. He is not a free agent, capable of intelligent voluntary action, and therefore incapable of a *guilty intent*, which is the very essence of crime ; but a civil action to recover damages for an injury may be maintained against him because the *intent* with which the act is done is not material." In *Morse v. Crawford*, 17 Vt. 499, which was a suit brought against an insane person for destroying property of which he was the bailee, it was held, that the insanity of the defendant was no defence. *Bennett, J.*, said: "When one receives an injury from the act of another, this is trespass, though done by mistake or without design—consequently no reason can be assigned why a lunatic should not be held liable." In the examination of this subject no authority has been found to the effect that a lunatic is not liable civilly for torts committed by him.

The *contracts* of a lunatic before inquisition of lunacy are not void, but voidable only. *Jackson v. Gumaer*, 2 Cow. 552 ; *Ingraham v. Baldwin*, 5 Seld. 45 ; *Price v. Berrington*, 7 E. L. & E. 254 ; *Person v. Warren*, 14 Barb. 488. He is liable for

necessaries. 1 *Parsons Con.* 385. Where money has been paid by a lunatic upon a contract made with him in good faith, and without knowledge of the lunacy, no action lies by him to recover the money back. *Beavan v. McDonnell*, 24 E. L. & E. 484; *Molton v. Camroux*, 4 Exch. 17. Contracts made by one of unsound mind before the appointment of a committee were held valid where no undue advantage was taken of him. *Sims v. McLure*, 8 Richardson Eq. (S. C.) 286. In this case the court say: "A fair contract made with a lunatic by a third person without notice of the lunacy will not be disturbed." Where a vendor is found a lunatic from a date subsequent to the time of the contract to purchase, but prior to the execution of the conveyance, the purchaser may enforce the completion of the contract by a bill for a specific performance. *Yauger v. Skinner*, 1 McCarter 395, and cases cited. And a court of equity will not set aside a contract overreached by an inquisition in lunacy, if the transaction was a fair one, and the parties who dealt with the lunatic, without notice of the lunacy, cannot be reinstated. *Neill v. Morley*, 9 Ves., 478.

The result of the above cases is, that lunatics are civilly liable for their torts, and they are also liable on their executed contracts made in good faith without notice of the lunacy, where the contract cannot be annulled without injury to the other contracting party, and therefore where the parties cannot be placed *in statu quo*.

There would seem to be no reason why the rules of law applicable to the civil acts of lunatics should be departed from in actions brought upon life insurance policies where the

assured caused his own death. In *Borradaile v. Hunter*, 5 M. & G., 639, the policy contained a proviso that in case "the assured should die by his own hands," the policy should be void. The jury found that the assured "threw himself from the bridge *with the intention of destroying his life*, but at the time of committing the act he was not capable of judging between right and wrong." It was held that the proviso included all acts of intentional self-destruction. *Erskine, J.*, said: "Looking simply at that branch of the proviso upon which the issue was raised, it seems to me that the only qualification that a liberal interpretation of the words with reference to the ^{act} nature of the contract requires is, that the act of self-destruction should be the voluntary and willful act of a man having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by that act; and that the question whether at the time he was capable of understanding and appreciating the moral nature and quality of his purpose is not relevant to the inquiry, further than as it might help to illustrate the extent of his capacity to understand the physical character of the act itself." *Tindall, C. J.*, who dissented from the majority of the Court, based his opinion entirely upon the ground that the proviso in question referred to felonious suicide only. The reporters of this case add the following note: "No distinction appears to have been taken in this case between *criminal* and *civil* liability. If an insane person kills a man he is not criminally liable; but if he

slaughters his neighbor's sheep he is liable in damages to the owner. Quære, whether he would be liable for the consequential damage, to an insurance office which had paid the amount of a policy on the life of a person killed by him?"

In *Clift v. Schwabe*, 3 M. G. & S., 437, where the policy contained a proviso that it should be void if the assured should "*commit suicide*," it was held that the term "suicide" embraced all voluntary acts of self-destruction whether criminal or not, "and therefore that if A. voluntarily killed himself, it was immaterial whether he was or was not at the time a responsible moral agent." *Pollock, C. B., and Wightman, J.*, who dissented from the opinion of the majority of the court, did not deny the case of *Borradaile v. Hunter* to be law, but contended that the term "suicide" meant a *felo de se*, whereas the term "in case the assured should die by his own hands," meant any conscious and intended act of self-destruction; and they agreed that if the proviso had read, "should die by his own hands," instead of "should commit suicide," the defendants would have been entitled to judgment. The same doctrine is held to be law in *Dormay v. Borradaile*, 10 Beav., 342. In *Dufaur v. The Professional Life Assurance Company*, 25 Beav., 602, the Master of the Rolls refers to the cases of *Dormay v. Borradaile*, *Borradaile v. Hunter*, and *Clift v. Schwabe*, as having settled the law in England as to the civil responsibility of a lunatic in an action upon a life insurance policy where death is caused by the hand of the assured, although he might not have been morally responsible for the act.

The English cases have been followed in Massachusetts. In *Dean v. The American Life Insurance Company*, 4 Allen, 96, "The parties agreed that Cheney did cause his own death by cutting his throat with a razor. The plaintiffs, however, alleged and offered to prove that the act whereby his death was caused *was the direct result of insanity*, and that his insanity was what is called suicidal depression, impelling him to take his life, and that that is the necessary and direct result of such insanity or disease." The court said: "The facts agreed by the parties concerning the mode in which the plaintiffs' intestate took his life, leave no room for doubt that self-destruction was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it. Such being the fact, it is wholly immaterial to the present case that he was impelled thereto by insanity, which impaired his sense of moral responsibility, and rendered him to a certain extent irresponsible for his actions."

The case of *Breasted v. Farmers' Loan and Trust Company*, 4 Seld., 299, decided by the New York Court of Appeals, is quoted as denying the law to be as decided in England and Massachusetts. In that case the referee reported that the assured "threw himself into the Hudson river while insane, for the purpose of drowning himself, not being mentally capable at the time of distinguishing between right and wrong." It was held by a divided court, five judges voting for affirming the judgment below, and three for a reversal, that the assured did not die by his own hand within the

meaning of the policy: but *Willard, J.*, in delivering the opinion of the majority of the court, distinguished this case from that of *Borradaile v. Hunter*. He said that in the latter case the jury found "that he *voluntarily* threw himself into the water, *knowing* at the time that he should thereby destroy his life, and *intending* thereby to do so." This case does not decide, that an insured person who should *voluntarily, knowingly and intentionally* destroy his own life, would not thereby come within the terms of the proviso rendering void a policy of insurance, in case the assured should die by his own hand, although he might have been of unsound mind at the time the act was committed.

In the case of *Estabrook v. Union Mutual Life Insurance Company*, 54 Me. 224, the defendants were held liable, where the jury found that the assured killed himself as "the result of a blind and irresistible impulse over which the will had no control." Although *Appleton, C. J.*, in this case quotes approvingly the opinion of *Tindall, C. J.*, in *Borradaile v. Hunter*, it will be readily seen that the cases are not similar in principle. In the latter case the assured *intended* to take his life, in the former he did not; for by the finding of the jury in that case the assured had *no control* of his will at the time of the suicide.

In most of the opinions of the judges who have held that insanity is a sufficient excuse for suicide, in actions against life insurance companies, but very little account appears to have been taken of the recognized legal principles relating to the *civil* acts of lunatics in other cases. But it should be considered, that in the destruction of his life by the assured he commits an

injury to the life insurance company for which it ought not to be called upon to suffer, any more than any other person who is injured by the wrongful acts of a lunatic. While sane, he executed a *contract* with the company, agreeing that in case he should die by his own hand, his policy should be void. It was in the power of the company and the assured to make such a contract. The company had the right to except from its policy any named act or disease, and to declare, that in the event of the assured dying from such act or disease, his policy should be void. If it be said, therefore, that insanity being a disease, if the assured died by his own hand in consequence of that disease, the policy ought to be paid, as in the case of death by any other disease, the answer is, that by an express stipulation in the policy it was agreed that in the event of death in that particular way the policy should not be payable. Death by the hand of the assured was a risk *excepted* in the policy, and the assured cannot annul the contract. *Erkskine, J.*, in *Borradaile v. Hunter*, in speaking of the effect of the proviso that in case "the assured should die by his own hands," the policy should be void, says:—"The very object of a proviso like the present, is to take out of the operation of the general terms of the policy, death resulting from causes which would otherwise fall within the general scope of the contract." And *Coltman, J.*, in the same case, says:—"The directors of this insurance company, as practical men, must be well aware that, if it is to be made a question before a jury, between them and a plaintiff in the situation of this plaintiff, whether the party insured was of sane mind at

the time of his decease, their chance of obtaining a verdict would be but small. The act of self-destruction would, of itself, be considered as a proof of insanity; and compassion for a distressed family, struggling with a large and wealthy body, would in most cases prevent any calm appreciation of the evidence. I cannot, therefore, think that it was the intention of the office, in framing this exception, to subject themselves to liability in any case of voluntary self-destruction."

There does not appear to be any reason, founded upon settled legal principles or adjudged cases, why the proviso against suicide, in life insurance policies, should not apply, where the assured who takes his own life, did so intentionally; and notwithstanding the different opinions expressed by judges as to whether insanity at the time of the suicide will take a case out of the proviso rendering a life insurance policy void, if the assured shall die by his own hand, the weight of authority is, that when the self-destruction was *intended, voluntary and willful*, by a person who had sufficient mind to understand the *physical* nature of the act, the policy will be void, although the assured might not have been morally responsible.

No attempt has been made in the foregoing observations to define what in law *is* insanity; and although in view of the conclusion arrived at, the general nature of insanity need not be discussed, in reference to the contracts of alleged lunatics with life insurance companies, a brief consideration of the subject, in conclusion, may not be out of place.

The word insane, being derived from the Latin word *insanus*, defined by *Ainsworth* to mean, "*Mad, frantic, out of his wits; tempestuous, raging; inspired,*" almost any abnormal condition of mind renders a person more or less "*insane,*" according to the strict construction of the word. Excessive anger, fear, or grief, may suffice to put one temporarily "out of his wits;" and of late years many criminal trials, particularly trials for murder, where the defence was insanity, appear to have been conducted as if such were indeed the law.

Anciently, insanity was attributed to the "possession" by evil spirits, rendering the unhappy lunatic a fitter subject of punishment than of medical treatment. In after times, the moon was supposed to be the cause of, or to contribute greatly towards the distemper of madness. *Blackstone*, (1 Comm., 304,) says:—"A lunatic is properly one that hath lucid intervals; sometimes enjoying his senses, and sometimes not, and that frequently depending upon the change of the moon." *Sir Matthew Hale*, in speaking of permanent and intermittent "dementia," says: "The former is *phrenesis* or madness; the latter is that which is usually called *lunacy*, for the moon hath a great influence in all diseases of the brain, especially in this kind of *dementia*; such persons, commonly in the full and change of the moon, especially about the equinoxes and summer solstice, are usually in the height of their distemper;" during which period, the learned Chief Justice says, lunatics are not liable criminally: "But such persons as have their lucid intervals (which ordinarily happens between the full and change of the moon,) in such

intervals have usually at least a competent use of reason, and crimes committed by them in these intervals are of the same nature and subject to the same punishment as if they had no such deficiency." (1 *P. C.*, 31.) So far as the criminal law is concerned, *theoretically*, the test of insanity is "*whether the accused at the time of doing the act was conscious that it was an act which he ought not to do.*" *State v. Spencer, Supra.* So the law stood a century ago, and it is the law now. *Practically*, this rigid rule has been much relaxed: for it cannot be denied, as a matter of fact, that the humane impulses of juries, whether for better or for worse, now prompt them to disregard a rule looked upon so generally as a harsh and unreasonable one. Science has exploded many of the old theories as to the *cause* of insanity, and it is now looked upon as a *disease*, the seat of which is the brain. *Dean's Medical Jurisprudence*, 459. "But although a disease of the material organ, yet the symptoms disclosing it to the medical jurist consist in the defective, deranged, or perverted action and manifestation of the faculty or faculties of the mind." *Id.* 460.

There are many so-called definitions of insanity, but a disease so mysterious is not susceptible of a fixed definition, and much of the obscurity which has enveloped the subject may be owing to the attempts made by means of definitions, to furnish a general standard by which every particular case is to be measured. "The malady assumes so many forms, and exhibits itself in such Protean shapes, that it is out of our power to give anything bearing the semblance of a correct or safe definition of the disorder. If it be difficult to embrace

within the bounds of one sentence anything like a true description of the symptoms of general mental aberration, *a fortiori*, how abortive must be the attempt to lay down any rule by which we are to test in any particular case the presence or absence of moral responsibility." *Winslow on the plea of Insanity*, 74.

In *Ball v. Mannin*, 3 Bligh, N. S. 1, on a question whether a deed was void in law, on the ground of unsoundness of mind in the person by whom it was executed, it was held that to constitute such unsoundness of mind as should avoid the deed at law, the person executing such a deed must be incapable of understanding and acting in the ordinary affairs of life. The same doctrine has lately been held in this country in *Hovey v. Hobson*, 55 Me., 256. *Barrows, J.*, says: "In all cases involving an inquiry of this sort, in order to avoid erroneous conclusions, the strictest attention must be paid to the particular circumstances, so as to ascertain, if delusion and infirmity appear, whether they are so connected with the act, the validity of which is in dispute, as to show *as to that act*, the intelligent assenting mind was wanting. It is not upon proof of a few irrational or absurd acts *merely*, that mental alienation incapacitating a man for the management of his affairs and avoiding his contracts at the option of his heirs is to be inferred."

Perhaps no better exposition of the law of insanity, as applicable to civil cases, can be found than that laid down in *2d Greenleaf on Evidence*, 10th Ed., § 371, a. The learned author says: "What constitutes insanity of mind is a question

which has been very much discussed, especially of late years; and the opinions of learned judges seem at first view to be conflicting. But much of the apparent discrepancy may be reconciled, by adverting to the nature of the cases respectively in judgment. The degree of unsoundness or imbecility of mind sufficient to invalidate the acts of the party in some cases, may not suffice in others. But in regard to insanity, where there is no frenzy or raving madness, the legal and true character of the disease is *delusion*, or as the physicians express it, illusion or hallucination. And this insane delusion consists in a belief of facts which no rational person would believe. It is distinguished from *moral* insanity, which consists in the perversion or disordered state of the affections or moral powers of the mind, in contradistinction to the powers of the understanding or intellect. This latter state of the mind is held not sufficient to invalidate a will, unless it is accompanied by that *delusion in matters of fact which is the test of legal insanity.*"

If insanity is a disease of the brain, manifesting itself by *delusion*, it follows that if there is no delusion, there is no insanity; and persons *not diseased* in mind ought to be held to a civil and criminal accountability for their acts. Mere outbursts of passion, no matter upon what sudden provocation, never can amount to insanity, or be evidence of insanity, unless thereby the intellect is shattered so that the reasoning faculties of the mind are diseased; and whether this is so or not, is to be determined, not from the alleged insane act alone, or chiefly, if any cause can be assigned for the act, but from

the acts and conduct of the person pleading insanity before and after the act, as well as at the time of its commission.

Although coroners' juries, owing to the barbarous manner with which the bodies of felonious suicides were formerly treated, have always endeavored to excuse the act on the ground of insanity, yet until very recently, it was never claimed as a matter of law, that the act of self-killing was any evidence in itself of insanity. Some late medical writers hold, that the act *per se* is evidence of insanity. In the sense that *all* criminals are insane—as some maintain—this may be true; but it must be admitted that ordinarily sane men, in all ages and countries, have committed suicide; ancient and modern treatises have been written in its justification, and in some countries suicide is at this day held to be a meritorious act. Whatever the *opinion* of medical men, or others, may be upon the subject, such opinion cannot be based upon *evidence*, since the state of mind in which the suicide was at the very time of the act, can only be inferred from his preceding conduct. Instantaneous insanity is as impossible as any other instantaneous disease; (although some theorists maintain the contrary;) and if there is no evidence that previous to the suicide, the deceased was insane, it must follow, as a conclusion of law, that at the time of the commission of the act, he was of sane mind, and responsible for his acts. Whether a person who perpetrates any rash or absurd act, is *non compos mentis*, in a legal sense, is to be determined by proof, in the same way that any other matter of fact is proved. No one ought to be allowed to insure his

life, with the idea that if through disgrace or misfortune he desires no longer to live, he may put an end to his life, with the certainty or strong probability that his life insurance policy will be paid. Such doctrine is as subversive of good morals, as it is unjust to the insurers.

